

**In the High Court of Uttarakhand at Nainital.**

A.O. No. 946/2001

M/s Oriental Insurance Company  
Ltd. Haridwar,  
through Divisional Manager  
Oriental Insurance Company Ltd.  
Haridwar ... Appellant.  
Vs.  
Smt. Pramila and 5 others ... Respondents.

**Sri T.A. Khan, learned counsel for the appellant.**  
**Sri rajendra Kotiyal, learned counsel for the respondents.**

**Date: 18-8-2004**

**Hon'ble P.C. Verma, J.**

**Hon'ble B.S. Verma, J.**

The appellant Oriental Insurance Company has filed the present appeal against the award dated 20-4-2001 made by Motor Accident Claim Tribunal/District Judge Tehri Garhwal in M.A.C.T. Case No. 53 of 1999.

2- The facts giving rise to this appeal are that on 5.7.1999 at about 2.20 p.m. deceased Vijendra Singh was traveling in Mahindra jeep bearing No. U.P. 07-J- 0833 from Pauri to Srinagar. When the ill-fated jeep reached near Village Ufalda, at Ganga Darshan bend on Pauri- Srinagar motor road, it fell down in the ditch due to the rash and negligent driving of the driver of the jeep. Vijendra Singh received serious injuries in the accident and he was admitted at Srikot hospital and from there he was referred to Dehradun for better care and treatment but in the way he succumbed to his injuries at Laxman Jhula. The tribunal after hearing parties awarded Rs. 8,26,000/- as compensation to the claimants-respondents along with 9% interest per annum.

3- In appeal the first point raised by the learned counsel for the appellant relates to the amount of compensation. According to him the tribunal has awarded the compensation on excessive side. Now it is settled law of the Apex Court that the Insurance Company can not file

an appeal under section 173 of the Motor Vehicle Act on the question of quantum of compensation. Therefore, this ground of the appellant is rejected.

4- The second point raised by the learned counsel for the appellant is that the vehicle involved in the accident was passed for carrying five passengers except one driver while at the time of accident it was carrying 15 passengers. This aspect was considered by the tribunal and has recorded its finding in negative. The tribunal has rejected the allegation of the insurance company that the vehicle was carrying 15 passengers at the time of accident. In the claim petition driver of the vehicle was not made party and the allegation of the insurance company remained unrebutted from his side. If there was any breach of insurance policy from the side of the owner/driver of the vehicle and instead of insurer the owner/driver of the vehicle were liable to pay the compensation. The interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimants, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Accidents Claim Tribunal and same was decided against the owner and in favour of the insurer, as has been held by the Apex Court in the case of *National Insurance Company Ltd. Vs. Baljit Kaur and others* ; (2004) 2 Supreme Court Cases .

6- In view of the law laid down by the Supreme Court, in the above mentioned case, under Article 142 of the Constitution of India, to meet the ends of justice the Insurance Company was directed to satisfy the award. Therefore, in the same terms we direct that the Insurance Company shall satisfy the award and shall recover the amount of the same from the insured, if the liability of the insured is fixed by the executing court i.e. Motor Accident Claim Tribunal.

7- For the aforesaid reasons, the appeal is disposed of accordingly subject to the directions aforementioned.

8- The amount of compensation if deposited here, shall be transmitted to the Motor Accident Claims Tribunal concerned.

**(B.S. Verma, J)**      **(P.C. Verma, J.)**

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